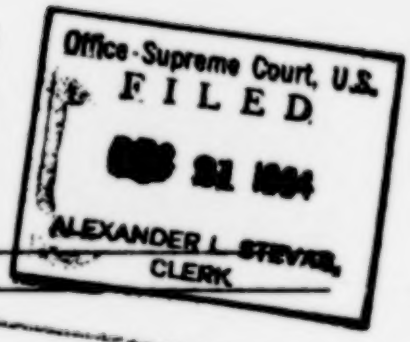

No. 83-2126

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THE STATE OF OKLAHOMA
Petitioner,
v.
TIMOTHY R. CASTLEBERRY
and
NICHOLAS RAINERI
Respondents.

ON WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

BRIEF OF PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1. Whether, under the Fourth Amendment principles set forth in United States v. Ross, 456 U.S. 798 (1982), when an officer has probable cause to believe that there is contraband in a specific container in a vehicle, and probable cause exists to support a search of the entire vehicle, he is required to obtain a search warrant for the vehicle and the compartments and containers therein.

2. Whether, when officers arrest a suspect on probable cause, and the suspect, who is standing next to the vehicle, is able to place a container inside a vehicle, the police may search the container as a search incident to arrest or pursuant to the automobile exception rule.

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BRIEF OF PETITIONER

OPINION BELOW

The decision of the Oklahoma Court of Criminal Appeals from which the certiorari is sought is reported as Castleberry v. Oklahoma, 678 P.2d 720 (Okl.Cr. 1984). This Opinion was filed on January 23, 1984, and the State of Oklahoma's (hereinafter referred to as "the State") Petition for Rehearing was denied on April 5, 1984. The Court's mandate was issued on April 11, 1984.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

Nicholas Raineri (hereinafter referred to as the "Defendant Raineri") and Timothy R. Castleberry (hereinafter referred to as the "Defendant Castleberry"), were both convicted after a jury trial on two counts of Possession of a Controlled Dangerous Substance With Intent to Distri-

bute, Okla. Stat. Ann., tit. 63, § 2-401 in the District Court of Oklahoma County, State of Oklahoma. The Defendant Castleberry was also convicted in a subsequent jury trial for the offense of Possession of a Controlled Dangerous Substance, Okla. Stat. Ann., tit. 63, § 2-402.

The Defendant Raineri was sentenced to nine years imprisonment and a $5,000.00 fine on Count 1 and seven years imprisonment and a $5,000.00 suspended fine on Count 2. The Defendant Castleberry was sentenced to ten years imprisonment and a $5,000.00 fine on Count 1 and seven years imprisonment and a $5,000.00 suspended fine on Count 2. The Defendant Castleberry was sentenced to eight years imprisonment on the separate charge of Possession of a Controlled Dangerous Substance.

The two cases were consolidated on appeal and the convictions of both Defen-

dants were reversed in a decision of the Oklahoma Court of Criminal Appeals reported at 678 P.2d 720 (Okl.Cr. 1984) (A. 27).

The facts presented at trial revealed that at approximately noontime on June 9, 1981 (Tr. I, 6),[1] Officer R.D. Taylor of the Oklahoma City Police Department, Narcotics Division (Tr. I, 5), received a telephone call from an informant, previously unknown to him but referred by a fellow police officer (Tr. I, 18). The informant advised him that the informant had seen a large quantity of marijuana, some cocaine, and white pills in Room 113 at the Southgate Inn, a motel located on Interstate 35 in Oklahoma City. The

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[1] The following transcript designations will be used: Tr. I - Transcript of proceedings held on September 1-2, 1981 (F-82-227) (trial of the Defendants Castleberry and Raineri); Tr. II - Transcript of trial proceedings held on September 23-24, 1981 (F-82-228) (trial of the Defendant Castleberry).

informant told Taylor that he or she had been in the room within the past ten hours (Tr. I, 18). The informant gave the officer a description of the men in the room and of the suitcase containing some of the narcotics. The informant also told the officer that one of the men was Tim Castleberry and the other was named Nick. The officer was also informed that they were driving a 1980 or 1981 blue Thunderbird with Florida license plates (Tr. I, 6-7).

Officer Taylor immediately drove to the location. He drove through the parking lot and observed a blue 1980 or 1981 Thunderbird with Florida license plates parked immediately in front of Room 113. Taylor parked his vehicle approximately five parking spaces away from the Thunderbird and went to see the desk clerk. After advising her that he was a police

officer, he inquired as to who was staying in Room 113 (Tr. I, 7). The desk clerk stated that it was registered to a Tim Castleberry, that he had paid only for the previous night and that checkout time was at 1:00 p.m. (Tr. I, 8). It was approximately 12:50 p.m. at this time (Tr. I, 18).

The officer returned to his car and waited (Tr. I, 8). He had previously cal' d for assistance (Tr. I, 7). After waiting five or ten minutes, Officer Taylor observed the Defendant Castleberry exit the motel room carrying a baby blue leather suitcase (Tr. I, 8), and place it in the trunk of the car. This suitcase matched the description of one given by the informant which the informant stated contained some of the drugs (Tr. I, 6,8, 12,26).

Castleberry left the trunk open and the Defendant Raineri came out carrying two plaid suitcases, which were also placed in the trunk. Then a young male came out and went to a red car parked next to the Thunderbird. The Defendant Castleberry returned with another blue suitcase, which he placed in the backseat of his vehicle.

After inquiring about his backup, Officer Taylor approached the car while the door and the trunk were still open (Tr. I, 9). Taylor testified that he could detect the smell of marijuana coming from the trunk (Tr. I, 11). All three men were standing outside. He held his badge in one hand and his service revolver in the other, advised the men he was a police officer, and ordered them to place their hands on the car.

The Defendant Raineri placed his hands on the vehicle as ordered (Tr. I, 10), but the Defendant Castleberry, after closing the trunk of the car, reached behind his back. The officer asked him twice to place his hands on the car but Castleberry refused to do so. Finally, the Defendant Castleberry threw something from behind his back into the car (Tr. I, 11). Officer Taylor then attempted to physically force the Defendant Castleberry to place his hands on the car, but eventually had to wrestle him to the ground.

While on the ground, the Defendant Castleberry reached up, locked the car door, and closed it. The car keys remained in the car door.

At this time, with the situation under control, Officer Taylor's partner, Officer Bill Citty arrived. Officer Taylor gave Officer Citty the car keys, told

him he had smelled marijuana coming from the trunk, and asked him to open the trunk. The Defendant Raineri was at the passenger side of the car with his hands on top, and the Defendant Castleberry was laying on the ground with his head next to the left rear tire (Tr. I, 21). Officer Citty opened the trunk and also smelled "a very strong odor" of marijuana (Tr. I, 26). Officer Citty opened the plaid suitcases and found that they were filled with marijuana (Tr. I, 12,26). Officer Taylor then advised the men that they were under arrest (Tr. I, 12,26).

Taylor then told Citty that the informant had told him that "there was a large amount of powder" in the blue suitcase and that he wanted Citty to check it (Tr. I, 26). Officer Citty then broke open the blue leather suitcase and found that it contained a large sum of cash and

a clear plastic baggy containing approximately ten ounces of white powder (Tr. I, 12,27). The powder was later determined to be methaquaalone powder (Tr. I, 37).

Officer Citty then opened the car door and searched the interior (Tr. II, 13). In that search, he found a white Band-Aid box on the dashboard of the vehicle which contained approximately an ounce of white powder (Tr. II, 14,59-60). This white powder was later determined to be cocaine (Tr. II, 68).

SUMMARY OF ARGUMENT

In the present case, if the facts known to Officer Taylor when he approached the Defendants had been presented to a magistrate, a search warrant based upon probable cause would have been issued for the search of the automobile. Therefore, under the principles of United States v.

Ross, 456 U.S. 798 (1982), all containers and compartments in the vehicle could have been searched without a search warrant pursuant to the "automobile exception" rule. This search would include the luggage in the trunk and the Band-Aid box in the passenger compartment.

The fact that the officers knew of the specific location of some of the narcotis should not mean that they were required to obtain a search warrant for the containers or compartments concealing such. A rule such as this would inject a great amount of uncertainty into what is at the present time a workable, straightforward rule regarding searches of automobiles.

The present case differs from that in Arkansas v. Sanders, 442 U.S. 753 (1979) and United States v. Chadwick, 433 U.S. 1 (1977) in that in those cases the only

potential location of the narcotics was the suitcase and footlocker, and not a vehicle which might have been transporting such. In Arkansas v. Sanders, supra, there was no reason to believe that the taxicab which was carrying the suitcase was a possible repository for narcotics and therefore, the fact that the suitcase was merely resting in the automobile taxicab did not give rise to the "automobile exception" justification for the search.

In the present case, however, there was probable cause to believe that drugs had been moved from the motel room where they had been seen by an informant to the vehicle parked outside the motel room. The fact that information provided by the informant was that he or she had seen "some" of the drugs in a suitcase (implying that the rest of the drugs were in

other places in the room), that the Defendants' were in the process of loading their automobile at check-out time, that the automobile had Florida licenses plates on it, that the Defendants wee staying at a motel located on a major interstate highway, that the Defendant Castleberry threw an object into the car when approached by Officer Taylor and subsequently locked the car, is part of the evidence which supports the view that the vehicle, as a whole, was the "suspected locus" of the object of the search. The relationship between the objection of the search and the vehicle in Sanders and Chadwick was purely coincidental. Here, the relationship between the vehicle and the object of the search is apparent.

The additional intrusions into the contents of the luggage and the Band-Aid box were minimal when viewed in the con-

text of the right of the police to arrest and search the person and effects of the Defendants and impound and search their vehicle. The interests of the public in clear rules and efficiency in the allocation of police resources are also considerations when determining whether a search warrant should have been obtained in the present case.

ARGUMENT

PROPOSITION I

THE SEARCH OF THE SUITCASES IN THE TRUNK OF THE VEHICLE WAS JUSTIFIED UNDER THE AUTOMOBILE EXCEPTION PRINCIPLE BECAUSE A MAGISTRATE WOULD HAVE BEEN JUSTIFIED IN ISSUING A SEARCH WARRANT AUTHORIZING THE SEARCH OF THE ENTIRE VEHICLE SINCE PROBABLE CAUSE WOULD SUPPORT THE BELIEF THAT THE VEHICLE CONTAINED CONTRABAND.

The Oklahoma Court of Criminal Appeals held that the officers illegally searched the suitcases found in the trunk of the vehicle, finding that the search

fell within the dictates of Arkansas v. Sanders, 442 U.S. 753 (1979) and United States v. Chadwick, 433 U.S. 1 (1977), rather than those of United States v. Ross, 456 U.S. 798 (1982). One of the pertinent parts of the Opinion of the Oklahoma Court of Criminal Appeals in this regard is as follows:

> "If the officer has probable cause to believe there is contraband somewhere in the car, but he does not know exactly where, he may search the entire car as well as any containers found therein. [Citations omitted] . . . If, on the other hand, the officer has only probable cause to believe there is contraband in a specific container in the car, he must obtain the container and delay his search until a search warrant is obtained." 678 P.2d at 724; A. 34.

The Court held that since the suitcases and the Band-Aid box were the "suspected locations" of the contraband, "[t]he officer should have detained the containers until a search warrant had been obtained." 678 P.2d at 724; A. 36.

The State contends that the ruling of the Oklahoma Court of Criminal Appeals is at odds with that of this Court in United States v. Ross, supra. In Ross, the Supreme Court specifically held that once probable cause is found, a vehicle may be searched without a warrant and "[t]he scope of a warrantless search based on probable cause is no narrower--and no broader--than the scope of the search authorized by a warrant supported by probable cause." 456 U.S. at 823.

The facts of the present case are such that a magistrate would have issued a search warrant for the search of the Defendants' entire vehicle. Officer Taylor had been advised that a man named Tim Castleberry and another man named Nick were in possession of a large quantity of marijuana, some cocaine and "some other white pills" (Tr. I, 6). The informant

had been in the room within the past ten hours (Tr. I, 18). Officer Taylor was given a physical description of the Defendants, the motel and room number where they were staying, and of the suitcase that "some of the narcotics [were] in" (Tr. I, 6). The informant also told him that the Defendants were driving a late model 1980 or 1981 blue Thunderbird with Florida tags (Tr. I, 5-6).

The information was fully corroborated when Officer Taylor arrived at the motel. When he drove through the parking lot he observed a blue 1980 or 1981 Thunderbird with Florida license plates parked "immediately" in front of the room specified by the informant (Tr. I, 7). The motel clerk confirmed that the room referred to by the informant was registered to a Tim Castleberry (Tr. I, 7-8).

After returning to his car and waiting appropriately five or ten minutes, Taylor observed Defendant Castleberry leave the motel room carrying a blue suitcase which matched the description of the suitcase that the informant had stated contained "some" of the narcotics (Tr. I, 6,6,12,26). Castleberry placed this suitcase in the trunk of the Thunderbird. The Defendant Raineri loaded two plaid suitcases into the trunk and Castleberry returned with another blue suitcase, which he placed in the backseat of the car (Tr. I,9).

Officer Taylor had also been advised by the motel clerk that the Defendant Castleberry had paid for only one night and that check-out time was 1:00 p.m. Taylor arrived at the motel at approximately 12:50 p.m. (Tr. I, 18).

Armed with this information, Officer Taylor approached the Defendants with his gun drawn and his badge displayed, advising them that he was a police officer and to put their hands on the car (Tr. I, 10). As he approached the trunk he could detect the odor of marijuana (Tr. I, 11). The Defendant Raineri complied with this command, but Castleberry, after closing the trunk, placed his hands behind his back and ignored two requests from Taylor to take his hands from behind his back and place them on the car (Tr. I, 11). Castleberry then threw an object into the car (Tr. I, 11). Officer Taylor then attempted to force Castleberry to place his hands on the car, and in the process had to wrestle him to the ground. Castleberry then reached up, locked the car door and closed it (Tr. I, 11).

The State submits that, based upon this information, a magistrate would have found probable cause to believe that the vehicle contained contraband and would have been justified in issuing a search warrant allowing the police to search the entire car.

The evidence points to the fact that the vehicle was a repository for narcotics. Officer Taylor observed the car being loaded with luggage when he arrived. Check out time was at hand. The informant had seen various types of drugs in Room 113, including marijuana, cocaine and what were described as "white pills" (Tr. I, 6). At least one of the suitcases matched the description of one which contained "some" of the drugs (Tr. I, 6,8,12,26).

Other facts known to Officer Taylor are also important. Defendant Castleberry threw an object into the car when ap-

proached by a law enforcement officer. The car was parked at a motel located on a major interstate highway and was displaying Florida license plates.[2] All of this would lead a reasonable person to conclude that drugs were being removed from the motel room to the car. Certainly a magistrate would find that, at the very least, probable cause existed to believe that narcotics were being "concealed" in the vehicle. Carroll v. United States, 267 U.S. 132, 153 (1925).

It is significant that the informant had advised Officer Taylor that "some" of the narcotics had been in a blue suitcase.

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[2] In Illinois v. Gates, 103 S.Ct. 2317, 2334 (1983) the Supreme Court stated that the fact that the defendants' automobile traveled from Florida to Illinois supported the belief that it contained drugs, noting that "Florida is well-known as a source of narcotics and other illegal drugs."

Therefore, this case is distinguishable from the situations in Arkansas v. Sanders, 442 U.S. 753 (1979) and United States v. Chadwick, 433 U.S. 1 (1977), where the information indicated that all of the contraband was in one container. In the present case, contraband could have been concealed in any of the suitcases, the object thrown into the car, or any other containers or compartments in the vehicle where drugs could have been placed after their removal from the motel room. It is also important to remember that Officer Taylor testified that he detected the odor of marijuana coming from the trunk as he walked up to the vehicle, which means that marijuana could have been stored in any compartment or container in the trunk.

As previously noted, the Oklahoma Court of Criminal Appeals based their

holding on the reasoning that if officers know specifically in what container contraband may be located, a search warrant must be issued before the container is searched. The State believes that this was an incorrect and narrow reading of United States v. Ross, supra, Arkansas v. Sanders, supra, and United States v. Chadwick, supra, and is inconsistent with other Supreme Court cases dealing with the automobile exception as well.

In Ross the police were told by the informant the specific location where the drugs were located, i.e., the trunk. 456 U.S. at 800. Despite that fact, this Court did not require that the police obtain a search warrant for the trunk.

In Colorado v. Bannister, 449 U.S. 1 (1980) the police obviously knew of the exact location of items which they seized, lug nuts and lug wrenches, since

the police observed those items in plain view in the glove compartment and on the floorboard of the back seat. This Court held that the Colorado Supreme Court was incorrect in holding that a search warrant should have been obtained, applying the automobile exception principles of Carroll. See also Texas v. Brown, 460 U.S. 730 (1983) where facts similar to Bannister existed although the warrantless seizure and subsequent search was upheld under the plain view doctrine.

In Texas v. White, 423 U.S. 67 (1975) the police knew of the location of the items they were seeking since a bank employee observed the defendant "stuff something" between the seats of his automobile. Nothing in the Court's opinion suggested that the police should have obtained a search warrant for the location where the suspected fruits or instrumentalities of the crime were hidden.

In Chambers v. Maroney, 399 U.S. 42 (1970) this Court upheld the warrantless search of a glove found in an automobile even though they presumably may have known that the glove contained change taken during a robbery since one of the robbers had directed the victim to place coins in the glove. Obviously, the Court did not hold that the police should have obtained a search warrant for the glove.

The clear holding of United States v. Ross, supra, is that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justified the search of every part of the vehicle and its contents that may conceal the object of the search." 456 U.S. at 825. If the police have an idea that certain compartments or containers conceal items they are searching for (in this case the blue suitcase) they should not be required to obtain a search

warrant for an automobile if probable cause exists to believe that contraband may be hidden in other parts of the automobile. In Ross, the Court stated that "[a] warrant to support a search of the vehicle would support a search of every part of the vehicle that might contain the object of the search." 456 U.S. at 821.

It is the State's view that Officers Taylor and Citty had probable cause to believe that contraband could be concealed in the automobile generally and that the "automobile exception" rule should apply in the present case. The fact that the informant had not been used by Officer Taylor previously (although the informant had been referred to him by another police officer) is merely a factor to be weighed in the "totality of circumstances." See Illinois v. Gates, supra, where an anonymous letter was sufficiently corroborated

by other police information. In the present case, the State has previously mentioned the observations of Officer Taylor which corroborated the informant's information, as well as the fact that the vehicle possessed Florida tags and was parked at a motel located on Interstate Highway 35.

Furthermore, the refusal of Castleberry to cooperate with the officer's commands, (which were issued with the assistance of a drawn gun), followed by Castleberry's disposing and locking up of an object he was hiding behind his back, surely reflect a consciousness of guilt. In a concurring opinion in Illinois v. Gates, supra, Justice White stated that "the proper focus should be on whether the actions of the suspects, whatever their motive, give rise to an inference that the informant is credible and obtained his

information in a credible manner." 103 S.Ct. at 2348. Justice White also noted in his concurring opinion in Spinelli v. United States, 393 U.S. 410, 427 (1969):

> "Because an informant is right about some things, he is more probably right about other facts."

In Texas v. Brown, supra, the Supreme Court observed that "probable cause is a flexible, common-sense standard" and that "it does not demand any showing that such a belief be correct or more likely true than false." 460 U.S. at 742. It was further noted that "[a] 'practical, non-technical' probability that incriminating evidence is involved is all that is required.' Brinegar v. United States, 338 U.S. 160, 176 (1949)." The Court then quoted from United States v. Cortez, 449 U.S. 411, 448 (1981), as follows:

> "The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities

> was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same-and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement."

In Illinois v. Gates, supra, it was stated:

> "As these comments illustrate, probable cause is a fluid concept--turning on the assessment of probabilities in particular factual contexts-not readily, or even usefully, reduced to a neat set of legal rules. Informants' tips doubtless come in many shapes and sizes from many different types of persons. . . . 'Informants' tips, like all other clues and evidence coming to a policeman on the scene may vary greatly in their value and reliability.' Rigid legal rules are ill-suited to an area of such diversity. 'One simple rule will not cover every situation.'" (Citation omitted). 103 S.Ct. at 2328-2329.

A rule that would require police to obtain a warrant when they knew of the locality of the object in an automobile

would cause much confusion in an area which the Court in Ross referred to as "this troubled area." 456 U.S. at 817. Instead of the straight-forward rule of Ross, which looks to the overall existence of probable cause to search a vehicle and its compartments and containers, endless litigation over whether the officer knew of the location of the contraband or fruits or instrumentalities of a crime would be inevitable.

This Court has repeatedly stressed the need for rules that are clear and are therefore, easy to apply uniformly. United States v. Ross, supra, 456 U.S. at 803-804. In New York v. Belton, 453 U.S. 454 (1981) the Supreme Court quoted Dunaway v. New York, 442 U.S. 200, 213-214 (1979) as follows:

> "'[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance

> the social and individual interests involved in the specific circumstances they confront.'" 453 U.S. at 458.

The need for straightforward and predictable rules is in the interest of both the police and the citizens who may be subjected to police activity. New York v. Belton, supra, 453 U.S. at 459-460.

Further evidence of the inappropriateness of a rule permitting an automobile container or compartment search depending upon whether the officer knew the specific location within the automobile of the object of the search is the fact that it holds the potential for a police officer to be able to broaden his or her authority to make warrantless searches by revealing less than all of their probable cause information. See LaFave, Search and Seizure, § 7.2, p. 200 (Supp. 1984).

The exclusionary rule already has several built-in aspects that are in opposition to a system of criminal justice supposedly based upon a search for truth in the assigning of guilt or innocence:[3] (1) the suppression of evidence that is directly relevant to the guilt of the person accused of an offense against society; (2) the fact that police who lie with regard to where evidence was found are rewarded with the admission of the evidence whereas those officers who tell the truth are punished by the suppression of the evidence and possibly the release of the criminal; and (3) the award of freedom to a criminal based upon conduct

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[3] In United States v. Leon, 104 S. Ct. 3405, 3409 (1984) the Court noted that there existed a tension between the exclusionary rule and procedures "under which criminal defendants are 'acquitted or convicted on the basis of all of the evidence which exposes the truth.'"

of an officer and not upon the free will decision of an individual to commit or not to commit the crime, in other words, the separation of the relationship between choice, and responsibility for that choice.

If the reasoning of the Court of Criminal Appeals is upheld, therefore, another mechanism at odds with the search for the truth would exist, as an officer who withholds facts which give him knowledge of the exact location of the object of the search would be rewarded by being allowed to search the entire vehicle without search warrant whereas full disclosure of his knowledge would mean that he would be required to take the time and trouble to acquire one.

The disadvantages of the exclusionary rule generally have been thoroughly discussed by this Court. United States v.

Leon, 104 S.Ct. 3405, 3412-3416 (1984); Stone v. Powell, 428 U.S. 465 (1976); Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 412-421 (1971) (Burger, C.J. dissenting). The applicability of the rule varies with the interests of the individual in a particular type of case and the interests of the public. I.N.S. v. Lopez-Mendoza, 104 S.Ct. 3479 (1984); United States v. Janis, 428 U.S. 433 (1976); Stone v. Powell, supra; United States v. Calandra, 414 U.S. 338 (1974).

Whether the exclusionary sanction is appropriately imposed in a particular case generaly "must be resolved by weighing the costs and benefits of preventing the use in the prosecutor's case-in-chief of inherently trustworthy tangible evidence . . . ." United States v. Leon, supra, 104 S.Ct. at 3412. Exceptions to the general rule requiring search warrants exist

because the Court has found that "societal costs of obtaining a warrant . . . outweigh the reasons for prior recourse to a neutral magistrate." Arkansas v. Sanders, supra, 442 U.S. at 759.

In United States v. Place, 103 S.Ct. 2637, 2642 (1983) the Court stated that it was necessary to "balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." In United States v. Jacobsen, 104 S.Ct. 1652, 1661 (1984) the Supreme Court found that the "additional intrusion" occasioned by a field test of cocaine after a container had previously been opened by private persons did not violate the Fourth Amendment.

The Court has held that there is a "dimmished expectation of privacy" when

one places his or her personal effects into an automobile. United States v. Chadwick, 433 U.S. 1, 12 (1977). For example, the "configuation, use and regulation of automobile often may dilute the reasonable expectation of privacy that exists with respect to differently situated property." Arkansas v. Sanders, supra, 442 U.S. at 761.

Furthermore, when a person leaves the privacy of his or her home and transports items of personal property in an automobile, constitutional protections cannot be expected to be the same. One who travels in an automobile is subject to being stopped for an infinite number of reasons. Delaware v. Prouse, 440 U.S. 648 (1979); Texas v. Brown, supra, 460 U.S. at 733. Additionally, activities undertaken in an automobile are not generally private in

nature.[4] As was observed in Segura v. United States, 104 S.Ct. 3380, 3389 (1984):

> "But the home is sacred in Fourth Amendment terms not primarily because of the occupants ' possessory interests in the premises, but because of their privacy interests in the acitivities within." (Emphasis original).

While the Fourth Amendment is obviously designed to protect against infringements upon personal freedom in the form of both invasions into expectations of privacy and interference with property interests, see United States v. Jacobsen, 104 S.Ct. 1652, 1656 (1984), the balancing of these interests against the requirement that a police officer be required to obtain a search warrant from a magistrate

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[4] Cf. Welsh v. Wisconsin, 104 S.Ct. 2091, 2094 (1984) and Payton v. New York, 445 U.S. 573, 578 (1980) where police invasions of residences intruded upon individuals while they were in personal circumstances.

prior to searching containers located in an automibile demands that the entire circumstances of a particular case be examined. Obviously, administrative considerations are relevant to this determination. In Robbins v. California, 453 U.S. 420, 433-434 (1981). Justice Powell observed in his concurring opinion:

> "Confronted with a cigarbox or a Dixie cup in the course of a probable-cause search of an automobile for narcotics, the conscientious policeman would be required to take the object to a magistrate, fill out the appropriate forms, await the decision, and finally obtain the warrant. Suspects or vehicles normally will be detained while the warrant is sought. This process may take hours, removing the officer from his normal police duties. Expenditure of such time and effort, drawn from the public's limited resources for detecting or preventing crimes, is justified when it protects an individual's reasonable privacy interests. In my view, the plurality's requirement cannot be so justified. The aggregate burden of procuring warrants whenever an officer has probable cause to search the most trivial container may be heavy and will not be compensated by the advancement of important Fourth Amendment values."

The State contends that in the present case, the additional intrusion into the Defendants' privacy interests caused by the immediate search of the luggage found in the automobile is outweighed by the need for clear rules governing searches of automobiles and the freedom from the practical inconvenience necessitated by the warrant procedure every time justification exists for the search of a container or compartment in a vehicle.

This is particularly true in light of the restraints and invasions an individual who is driving an automobile is subjected to when there is probable cause to believe that a container or compartment within such is concealing contraband or the fruits or instrumentalities of a crime. That person can be immediately and publicly arrested without a warrant.[5] He can

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[5] United States v. Watson, 423 U.S. 411 (1976).

then be handcuffed, placed in a police car, and taken to the police station. He can then be mugged, fingerprinted,[6] and booked. He can be subjected to a complete search of his person[7] and any personal effects carried with him can be fully searched, examined and inventoried.[8] His clothing can be taken from him, searched, and kept in "official custody."[9] In appropriate cases, his fingernails can be

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[6] Davis v. Mississippi, 394 U.S. 721 (1969).

[7] United States v. Robinson, 414 U.S. 218 (1978).

[8] Illinois v. Lafayette, 103 S.Ct. 2605 (1983).

[9] United States v. Edwards, 415 U.S. 800 (1974).

scraped,[10] his blood can be taken[11] and he can be placed in a lineup.[12]

With regard to his automobile, the entire passenger compartment can be searched[13] and the car can be seized, towed-in, and impounded.[14] If undertaken pursuant to standard police procedure, the entire automobile and its contents can be searched and inventoried.[15]

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10 Cupp v. Murphy, 412 U.S. 291 (1973).

11 Schmerber v. California, 384 U.S. 757 (1966).

12 Kirby v. Illinois, 406 U.S. 682 (1972).

13 New York v. Belton, 453 U.S. 454 (1981).

14 Chambers v. Maroney, 399 U.S. 42, 51 (1970).

15 South Dakota v. Opperman, 428 U. S. 364 (1976).

Therefore, in this context, the "additional intrusion" into an individual's privacy and property interests is outweighed by the previously mentioned public interests-clear search and seizure guidelines for the protection of the police and public alike, the efficient use of police resources which would be diluted by the requirement of a search warrant, and the compelling reasons why a criminal proceeding should be allowed to receive evidence directly related to the truth. At this point a defendant's privacy interests are minimal and the only function of the warrant requirement is to remove police from their crime prevention and detection responsibilities and to provide defense attorneys with a tool to thwart the admission of evidence constituting the most conclusive proof of the defendant's guilt.

Furthermore, it has previously pointed out that "[t]he public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit." United States v. Mendenhall, 446 U.S. 544, 561 (1980) (Powell, J., concurring). In United States v. Place, supra, 104 S.Ct. at 2643, the Court stated that it would weigh the "strong governmental interest" in preventing the flow of narcotics into distribution channels "against the nature and extent of the intrusion upon the individual's Fourth Amendment rights. . . ."

Additionally, if the police are allowed to make an immediate search of the containers in a vehicle, the guilt or innocence of the person under suspicion is quickly determined. Instead of being subjected to an arrest and the attendant indignities pending the obtaining of a

search warrant, a suspect whose baggage is searched on the scene and found not to possess objects of the search can be immediately released, his effects promptly returned, and the impoundment of his automobile avoided.[16]

Further evidence of the gamesmanship inherent in juggling the various theories used to justify a search of an automobile is that, in the present case, if Officers Taylor and Citty had merely termed their search an "inventory" search, it presumably could have been upheld on this basis if undertaken pursuant to an established police policy. South Dakota v. Opperman, supra. It is difficult to imagine how privacy interests in the contents of the

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[16] In Segura v. United States, supra, 104 S.Ct. at 3387, the Court noted that in Chambers v. Maroney, supra, "it was reasonable to seize and impound an automobile, on the basis of probable cause, for 'whatever period is necessary to obtain a warrant for the search.'"

luggage can be viewed as being important if they are dependent solely upon the particular label selected by the police which defines their state of mind at the start of the search. Additionally, scenarios which have results dependent upon semantics such as this cannot help but increase public and police cynicism toward the entire process and undermine respect for the law, which is supposedly based upon reason.

The State contends that the mix of do's and don'ts confronting Officer Taylor places him and other officers, whose primary justification for existence is to protect the rest of us from physical harm, in an unfairly complex position. Officer Taylor found himself confronted by two suspected and unknown drug distributors at a moment when both had been caught in possession of a quantity of drugs which

would send them to prison for many years. One of the suspects refused to remove his hands from behind his back after repeated commands. The suspect made a sudden movement to throw an object into the car. Officer Taylor had to forceably wrestled him to the ground while worrying about the other suspect, who had his hands on the car. During the struggle, Officer Taylor, who was still waiting for his backup to arrive, was bitten by the Defendant's dog (Tr. I, 8).

When Officer Citty arrived they then had to make an instant decision concerning principles which judges, scholars and lawyers have debated for decades. The officers had to decide whether to make a search, and what name to assign to that search. Are they to make an "inventory search," a "search incident to arrest," an "automobile exception search," a "plain

view search" or an "exigent circumstances search"? These decisions had to be made immediately after Officer Taylor had been confronted with a situation in which great danger could have been involved.

This case, therefore, presents facts which support the statements of this Court mentioned previously which reject the step-by-step analysis concerning search and seizure rules, and which are understandable by the police and the public.

In Illinois v. Lafayette, 103 S.Ct. 2605 (1983) the Court drew from its opinion in United States v. Robinson, 414 U.S. 218, 235 (1974) and reiterated:

> "'A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search.'" 103 S. Ct. at 2609.

In Oliver v. United States, 104 S. Ct. 1735 (1984) the Court refused to apply the open fields doctrine on a case-by-case basis, stating:

> "Nor would a case-by-case approach provide a workable accommodation between the needs of law enforcement and the interests protected by the Fourth Amendment. Under this approach police officers would have to guess before every search whether landowners had erected fences sufficiently high, posted a sufficient number of warning signs, or located contraband in an area sufficiently secluded to establish a right of privacy. The lawfulness of a search would turn on '[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions . . . .' New York v. Belton, 453 U.S. 454, 458, 101 S.Ct. 2860, 2863, 69 L.Ed.2d 768 (1981) (quoting LaFave, "Case-By-Case Adjudication" versus "Standardized Procedure": The Robinson Dilemma, 1974 S.Ct.Rev. 127, 142. This Court repeatedly has acknowledged the difficulties created for courts, police and citizens by an ad hoc, case-by-case definition of Fourth Amendment standards to be applied in differing factual circumstances. See Belton, supra, at 458-460, 101 S.Ct., at 2863-2864; Robbins v. California, 453 U.S. 420,

430, 101 S.Ct. 2841, 2847, 69 L.Ed. 2d 744 (1981) (POWELL, J., concurring); Dunaway v. New York, 442 U.S. 200, 213-214, 99 S.Ct. 2248, 2257-2258, 60 L.Ed.2d 824 (1979); United States v. Robinson, 414 U.S. 218, 235, 94 S.Ct. 467, 476, 38 L.Ed.2d 427 (1973). The ad hoc approach not only makes it difficult for the policeman to discern the scope of his authority, Belton, supra, 453 U.S., at 460, 101 S.Ct., at 2864; it also creates a danger that constitutional rights will be arbitrarily and inequitably enforced." 104 S. Ct. 1742-1743.

The State also contends that, as stated previously, the search of the luggage was justified since probable cause existed to search the Defendants' entire automobile.

In United States v. Ross, supra, 456 U.S. at 814, this Court observed that "in neither Chadwick or Sanders did the police have probable cause to search the vehicle or anything within it except the footlocker in the former case and the green suitcase in the later." It is settled that

while law enforcement officers may sometimes seize containers and packages, even with less than probable cause, United States v. Place, supra, 103 S.Ct. at 2641, "the mere existence of probable cause to believe that a container or package contains contraband plainly cannot justify a warrantless examination of its contents." United States v. Jacobsen, supra, 104 S.Ct. at 1665 (White, J., concurring).

However, this case and other similar cases differ from Arkansas v. Sanders, supra, and United States v. Chadwick, supra, in that in the latter cases probable cause did not exist to support the belief that evidence relevant to the criminal offense in question could have been in any location other than inside of the footlocker in Chadwick and the suitcase in Sanders. In Sanders there was no reason to believe that the taxicab in

which the defendant was riding contained any contraband. The suitcase was the only possible location of any contraband.

In United States v. Johns, 707 F.2d 1093, 1097-1098 (9th Cir. 1983) the Ninth Circuit rejected the defendants' contention that a search warrant should have been obtained for the search of containers in two trunks which were seized, although the search was held to be invalid due to a three day delay in opening the containers. The Court stated:

> "The officers had probable cause to search both vehicles, not just the new-discovered bales. Their suspicions did not focus solely on the packages; it was not obvious that all the contraband would be in the bales. The appellees could have easily secrete other drugs elsewhere in the vehicles.
>
> In United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977), the police officers had all the facts giving them probable cause to believe that contraband was in the footlocker and the suitcases before those containers were placed

> in the trunks of the cars. Placing the containers in the car did not give the officers probable cause to search the entire vehicle. In Ross and in this case, the officers' suspicions were not so specific. They did not know the exact nature and packaging of the contraband transferred from the airplanes to the trucks before arriving on the scene. The officers had probable cause to search both trucks. Under Ross, they also could have opened the packages as part of that search.

In United States v. Shepherd, 714 F.2d 316 (4th Cir. 1983) a case with facts similar to those in the present one, the Fourth Circuit upheld the warrantless opening of jugs of moonshine removed from the trunk of a parked automobile. The Court noted:

> "We believe that the case before us is more akin to Ross than to Chadwick and Sanders. Here the object of the agents' search was not directed solely to the interior of a few jugs which were seen loaded into the trunk of Shepherd's car. The agents had good reason to suspect, based on the information they had gathered as well as what they had seen with their own eyes, that the car was an instrumentality of Shep-

> herd's illegal whiskey enterprise, and that a search of the vehicle would disclose additional evidence. As it turned out, this hypothesis proved correct: upon opening the trunk the agents found thirty-eight gallons of illegal liquor, far more than they had observed from their hiding place. Under Ross, once the officers had probable cause to search the vehicle, they also acquired the authority to open any of the closed containers found therein." 714 F.2d at 323.

In the present case, the entire automobile could have been a hideaway for drugs. Drugs could have been placed in the glove compartment under the seat, in the dashboard, over the sunvisor, in the upholstery, in the trunk, under the hubcaps or in the ashtrays. As stated previously, the mere fact that the police knew of the location of "some" of the durgs should not have prevented an intense police search of the entire automobile without a warrant. In Carroll v. United States, supra, the police were allowed to

tear open the seat cushion in the search for contraband.

Here the entire car was the "suspected locus" of possible contraband and the relationship between the automobile and the contraband was obviously more than "purely coincidental." Arkansas v. Sanders, supra, 442 U.S. at 767 (Burger, C. J., concurring in the judgment). Since a magistrate would have issued a search warrant for the entire vehicle, "every part of the vehicle and its contents that may conceal the subject of the search" could be searched. United States v. Ross, supra, 456 U.S. at 825.

A hypothetical may illustrate a situation in which police should be allowed to search an entire vehicle even though they know of the location of some of the objects of the search. Assume a robber wearing a mask forced a bank teller at

gunpoint to place money in a suitcase. The bank's employees observe the robber run outside and place the suitcase in the trunk. After driving a few blocks the robber is stopped by the police and they remove the suitcase from the trunk. The robber does not have either the gun or the mask. Should not the police be allowed to search the suitcase and all containers and compartments in the car without a warrant? Even though the "suspected locus" of the ob ct of part of the search is the suitcase, other parts of the vehicle may contain other of evidentiary items, such as the gun or the ski mask. Warden v. Hayden, 387 U.S. 294 (1967). Also, it is possible the robber could have stopped between the time he robbed the bank and the time he was stopped and removed some of the money from the suitcase. The critical point is that since the entire vehicle may

be a repository for fruits or instrumentalities, pursuant to the dictates of Ross, the police should be allowed to search the entire vehicle, and its compartments and containers, including the luggage. The facts of Chambers v. Maroney, supra, provide a similar scenario and demand a similar holding.

The fact that the automobile was not moving in the present case is irrelevant. In Michigan v. Thomas, 458 U.S. 259 (1982), this Court again rejected the argument that because a vehicle has been immobilized and the occupants are in custody the police are required to obtain a search warrant for the contents. The holding of the Court should apply to the present case:

> "In Chambers v. Maroney, 339 US 42 (1970), we held that when police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a

warrantless search of the vehicle, even after it has been impounded and is in police custody. We firmly reiterated this holding in Texas v. White, 423 US 67 (1975). See also United States v. Ross, 456 US 798, 807, n. 9 (1982). It is thus clear that the justification to conduct such a warrantless search does not valish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the liklihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant." 458 U.S. at 261. See also Florida v. Meyers, 104 S.Ct. 1852 (1984); Texas v. White, supra, 423 U.S. 67 (1975); and United States v. Nigro, 727 F.2d 100, 104-107 (6th Cir. 1984).

For the reasons stated, the State submits that all evidence found in the Defendants' automobile was obtained as a result of a constitutionally permissible search since there was probable cause to believe that contraband drugs could have been concealed in various parts of the

automobile and a magistrate would have issued a search warrant for the entire vehicle.

PROPOSITION II

THE SEARCH OF THE BAND-AID BOX FOUND IN THE FRONT SEAT OF THE VEHICLE WAS JUSTIFIED UNDER THE AUTOMOBILE EXCEPTION PRINCIPLE AND AS A SEARCH INCIDENT TO A LAWFUL ARREST.

The Oklahoma Court of Criminal Appeals found that the search of the Band-Aid box, which had been thrown into the vehicle by the Defendant Castleberry as the officer approached with his badge, was illegal and the evidence found in that container should also have been suppressed. The Court stated that since the "suspected locations of the contraband were the suitcases and the Band-Aid box which Castleberry threw in the car" the officers "should have detained these containers until a search warrant had been

obtained." 678 P.2d at 724; A.35-37. As noted previously, the Court stated that, under their interpretation of Ross, Arkansas v. Sanders, and United States v. Chadwick, supra, if an officer has probable cause to believe there is contraband in a specific container in a car, he must detain the container and delay his search until a warrant is obtained. 678 P.2d at 724.

For the reasons stated in Proposition I, the State contends that the holding of this Court in United States v. Ross, supra, is in conflict with this reasoning under the automobile exception principle. If the luggage in the trunk was validly searched under this rule, then certainly there was probable cause to search other containers in the automobile, particularly after drugs were discovered in the suitcases. The Court in Ross specifically

held that the rule allowing the search of the automobile applied "equally to all containers." 456 U.S. at 822. The facts of the present case support the search of the Band-Aid box, which was thrown into the vehicle as the police approached.

The fact that Castleberry was able to lock the car after he had thrown the box inside should make no difference with regard to the legality of the search. In Ross, the detective, after arresting and handcuffing the defendant, took the defendant's keys and opened the trunk where the sack containing the contraband was found. 456 U.S. at 801.

Furthermore, under the principles of United States v. Robinson, supra, 414 U.S. 218, since Officer Taylor had probable cause to arrest Castleberry, he could have searched the box as incident to the custodial arrest. The fact that Castleberry

was able to throw the box into the car after the officer approached him should not prevent the seizure and search of the box. In Oliver v. United States, supra, 104 S. Ct. 1735, 1743, this Court rejected the contention that the defendants' actions in erecting fences and signs "in order to conceal their criminal activity," should provide a right to an expectation of privacy in the premises, stating that:

> "The test is not whether the individual chooses to conceal assertedly 'private' activity. Rather, the correct inquiry is whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment."

Therefore, the State contends that the action of the Defendant Castleberry in throwing the Band-Aid box into he car when the police approached should not serve to immunize it from a justified search.

This search of the interior of the automobile, including the Band-Aid box,

should also be upheld based on the search incident to lawful arrest principle of the Fourth Amendment. In New York v. Belton, supra, this Court upheld the search of a jacket found in the backseat of a vehicle belonging to a defendant, who along with his three companions, were in custody and outside the vehicle at the time of the search. This Court specifically held:

> "[w]hen a policeman has made a lawful custodial arrest of the occupants of an automobile, he may, as a contemporaneous incident of that arrest, search the possenger compartment of that automobile.
>
> It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." 453 U.S. at 460.

The facts of this case parallel those in Belton, supra. The evidence reveals that Defendant Castleberry was standing next to the vehicle door when he threw the

box inside. Therefore, the area was obviously within his control at the time of his arrest. Cf., New York v. Belton, supra, (coat found in backseat of vehicle).

CONCLUSION

For the reasons stated, it is respectfully requested that this Court reverse the judgment of the Oklahoma Court of Criminal Appeals in this case.

Respectfully submitted,

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